

BY MS. NEAL

NO 30318-03

AN ORDINANCE

Amending Sections 95.51, 95.52, 95.53, 95.54, 95.55, 95.61 and 95.65 of the Revised Code of General Ordinances Related to the Management, Administration, and Control of the Use of the City's Public Rights of Way and Declaring an Emergency.

WHEREAS, The Commission approved Ordinance No. 30188-02 on December 4, 2002, which created Sections 95.51-95.71 of the Revised Code of General Ordinances of the City of Dayton ("R.C.G.O.") and approved a set of comprehensive regulations and certain fees in regards to the usage and occupancy of the City's Rights of Way; and

WHEREAS, On February 3, 2003 certain utility and telecommunications users of the City's Rights of Way challenged the fee portions of Ordinance No. 30188-02 with the Public Utilities Commission of Ohio (PUCO); and

WHEREAS, The PUCO issued an initial Opinion and Order on June 26, 2002 and a subsequent Entry on Rehearing on August 19, 2003 in response to the challenge to the fee proscribed in Ordinance No. 30188-02; and

WHEREAS, The City is amending R.C.G.O Sections 95.51, 95.52, 95.53, 95.54, 95.55, 95.61 and 95.65 to follow the directives of the PUCO; and

WHEREAS, It is in the best interests of the City and its citizens to amend these sections at this time, and in order to provide for the immediate preservation of the public peace, property, health and safety, it is necessary that this Ordinance take effect immediately upon its passage; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Section 95.51 of the Revised Code of General Ordinances of the City of Dayton ("R.C.G.O.") is amended to read as follows:

95.51 DEFINITIONS

For the purposes of §§ 95.51 through 95.71, the following words and phrases shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

(A) **"AFFILIATE."** Each Person who falls into one or more of the following categories: (i) each Person having, directly or indirectly, a controlling interest in a Provider, (ii) each Person in which a Provider has, directly or indirectly a controlling

interest, (iii) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venturer or joint venture partner, of a Provider, and (iv) each Person, directly or indirectly, controlling, controlled by, or under common control with the Provider; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such Provider, or any creditor of such Provider solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Provider.

(B) “APPLICANT.” Any Person who seeks to obtain a Certificate of Registration and/or a Permit.

(C) “APPLICATION.” The process by which an Applicant submits a request to obtain Certificate of Registration and/or a Permit.

(D) “APPLICATION FEE.” The fee paid to the City for application for a Certificate of Registration pursuant to § 95.53(A).

(E) “BANKRUPTCY ACT.” The regulations promulgated by Title 11 of the United States Code.

(F) “BEST EFFORT(S).” The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable Laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.

(G) “CABLE FRANCHISE.” Has the same meaning as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

(H) “CABLE OPERATOR.” Has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

(I) “CABLE SERVICE.” Has the same meaning as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C.A. 522.

(J) “CERTIFICATE OF REGISTRATION.” The document issued to each Provider and its unique System to occupy the Rights of Way within the City that outlines the terms of that occupancy of the Rights of Way.

(K) “CITY.” The City of Dayton, Ohio.

(L) “CITY COMMISSION.” The governing body of the City.

(M) “CITY MANAGER.” The administrative head of the municipal government known as The City of Dayton, Ohio.

(N) "CONSTRUCT." Shall mean, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights of Way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the Right of Way.

(O) "CONSTRUCTION." Shall mean, but not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights of Way. Construction shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is part of the Right of Way.

(P) "CONSTRUCTION BOND." A bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights of Way pursuant to a Permit.

(Q) "CONSTRUCTION AND MAJOR MAINTENANCE PLAN." A written plan including maps of the expected location, design, other related equipment and Facilities of a Provider which describes in full the Construction intended to be accomplished by the Provider in the Rights of Way over the next calendar year.

(R) "CONSTRUCTION PERMIT." The Permit specified in § 95.30 et seq. and further defined by § 95.65 which must be obtained before a Person may Construct in, locate in, occupy, maintain, move or remove Facilities from, in or on a Rights of Way.

(S) "COUNTY." Montgomery County, Ohio (except for the purpose of the provision of sewer and water service within or through the City). County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County.

(T) "CREDIBLE." Worthy of being believed.

(U) "DESIGN GUIDELINES-CREATING A QUALITY ENVIRONMENT." The urban design standards promulgated by the Plan Board under § 44.18.

(V) "DEPARTMENT OF PUBLIC WORKS." The Department of Public Works of the City.

(W) "DIRECTOR OF PUBLIC WORKS." The Director of the Department of Public Works, or his or her designee.

(X) "EMERGENCY." A condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

(Y) "FACILITY(IES)." Any tangible thing located in any Rights of Way within the City; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights of Way between a Person's property and the street edge of pavement.

(Z) "FCC." The Federal Communications Commission, or any successor thereto.

(AA) "FULL." Unable to accommodate any additional Facilities as determined by the Director of Public Works in accordance with the principles of public health, safety and welfare, following a reasonable analysis taking into consideration: all applicable Law; commonly accepted industry standards; and routine engineering practices.

(BB) "GDRTA." The Greater Dayton Regional Transit Authority or its corporate successor for the limited purposes of providing public transportation.

(CC) "IN." When used in conjunction with Rights of Way, means in, on, above, within, over, below, under or through a Rights of Way.

(DD) "INSPECTOR." Any Person authorized by the Director of Public Works to carry out inspections related to the provisions of §§ 95.51 through 95.71.

(EE) "LAW." Any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of §§ 95.51 through 95.71 or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights of Way.

(FF) "MINOR MAINTENANCE PERMIT." A Permit, which must be obtained before a Person can perform minor maintenance, as set forth in § 95.67, in or on the Rights of Way.

(GG) "OHIO MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES." The uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to O.R.C. § 4511.09.

(HH) "O.R.C." The Revised Code of the State of Ohio.

(II) "OHIO UTILITY PROTECTION SERVICE." The utility protection service as defined in O.R.C. § 153.64 and/or § 3781.26 or a statutory successor thereto.

(JJ) "OPEN VIDEO SERVICE." Any video programming Services provided to any Person through the use of Rights of Way, which Person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.

(KK) "PERMIT." A Construction Permit, a Minor Maintenance Permit or a Special Privilege Permit, as the context requires.

(LL) "PERMIT COST." All direct, incidental and indirect costs actually incurred or realized by the City for Permit issuance, Permit oversight and pavement degradation resulting from Construction activity.

(MM) "PERMIT FEE." Money paid to the City for a Permit to Construct in the Rights of Way as required by §95.33(C,E,G,H,L,M,P,Q and R) and 95.37(C) of the R.C.G.O.

(NN) "PERMITTEE." Any Person to whom a Construction Permit, Minor Maintenance Permit and and/or Special Privilege Permit has been granted by the City and not revoked.

(OO) "PERSON." Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(PP) "PLAN BOARD." The Plan Board of the City of Dayton created pursuant to § 151.0144.

(QQ) "PROVIDER." A Person who owns or operates a System and has a valid Certificate of Registration. The City, County and cable television operators operating pursuant to a valid Cable Franchise, shall also be considered Providers.

(RR) "PUCO." The Public Utilities Commission of Ohio as defined in O.R.C. § 4901.02.

(SS) "R.C.G.O." The Revised Code of General Ordinances of the City of Dayton.

(TT) "REGISTRATION MAINTENANCE FEE." The money paid to the City to maintain a Certificate of Registration and compensate the City for all actual costs incurred by the City in the management, administration and control of the Rights of Way of the City, and which are not reasonably recoverable by the City through Construction Permit Fees or other approved recovery mechanisms.

(UU) "REMOVAL BOND." A bond posted to ensure the availability of sufficient funds to remove a Provider's Facilities upon abandonment or disuse, or discontinuance of a Provider's use or occupation of the Rights of Way.

(VV) "RESTORATION." The process and the resultant effects by which a Rights of Way is returned to a condition as good as or better than its condition immediately prior to the Construction. Restoration shall occur in accordance with the Rules and Regulations for Making Openings in a Public Way as amended from time to time.

(WW) "RIGHT(S) OF WAY." The surface and space in, above, within, over below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place,

area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a System. Rights of Way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by Law.

(XX) "RIGHT(S) OF WAY COST." All direct, incidental and indirect costs borne by the City for the management and administration of the Rights of Way and §§ 95.51 through 95.71 of the R.C.G.O.

(YY) "RULES AND REGULATIONS FOR MAKING OPENINGS IN A PUBLIC WAY." The rules and regulations governing the making and restoration of openings in streets, alleys, sidewalks, public ways or places of the City drafted under the authority of Chapter 95 of the R.C.G.O. and currently on file in the Department of Public Works.

(ZZ) "SERVICE(S)." The offering of any Service for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.

(AAA) "SPECIAL PRIVILEGE PERMIT." The Permit for special licenses and privileges that must be obtained from the Director of Public Works pursuant to § 95.30 et seq.

(BBB) "SUPPLEMENTARY APPLICATION." Any application made to Construct on or in more of the Rights of Way than previously allowed, or to extend a Permit that had already been issued.

(CCC) "SURETY FUND." A formal pledge made to secure against loss, damage or default.

(DDD) "SYSTEM." Any System of conduit, cables, ducts, pipes, wires, lines, towers, antennae wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the City. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, telecommunications systems (whether voice, video, data, or other), fiber optic systems, wireless communications systems, and transit electrification systems.

(EEE) "SYSTEM REPRESENTATIVE." The specifically identified agent/employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System related information. Any such System Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.

(FFF) "TRANSFER." The disposal by the Provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the System, or fifty-one percent (51%) cumulatively over the term of a Certificate of Registration of such interests to a corporation, partnership, limited partnership, trust, or association or Person or group of Persons acting in concert.

(GGG) "TRENCHLESS TECHNOLOGY." Shall mean, but not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights of Way as possible.

(HHH) "UNDERGROUND FACILITY(IES)." All lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights of Way.

(III) "UNUSED FACILITY(IES)." Facilities located in the Rights of Way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a Credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that it has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.

(JJJ) "UTILITY(IES)." Any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunication, signal, communication, or cable television conduit, fiber, wire, trackless trolley wires, cable, or operator thereof.

(KKK) "UTILITY CORRIDOR(S)." Those specific areas of the Rights of Way designated as such by the Director of Public Works pursuant to § 95.53(F)(1).

(LLL) "WORKING DAY." Any Monday, Tuesday, Wednesday, Thursday or Friday, but excluding legal holidays observed by the City.

Section 2. That R.C.G.O. Section 95.52 is amended to read as follows:

95.52 RIGHTS OF WAY ADMINISTRATION

(A) Administration.

The City Manager shall be the principal City official responsible for the administration of §§ 95.51 through 95.71, except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Works or other designee.

(B) Rights of Way Occupancy.

Each Person who occupies, uses or seeks to occupy or use the Rights of Way to operate a System located in the Rights of Way, or who has, or seeks to have, a System located in any Rights of Way, shall apply for and obtain a Certificate of Registration pursuant to §§ 95.51 through 95.71. Any Person owning, operating or maintaining a System in the Rights of Way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of §§ 95.51 through 95.71 shall apply for and obtain a Certificate of Registration from the City, unless exempted by § 95.52(D). Application will consist of providing the information set forth in § 95.53 and as reasonably required by the City Manager.

(C) No Construction Without a Certificate of Registration.

Following the effective date of §§ 95.51 through 95.71, no Person shall Construct or perform any work on or in, or use any System or any part thereof located on or in any Rights of Way without first obtaining a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor of the third degree as provided for in § 95.99.

(D) Exceptions.

(1) The following entities are not obligated to obtain a Certificate of Registration: the City (exclusive of its enterprise fund agencies which shall be required to obtain and maintain a Certificate of Registration); the County; and resellers of Services that do not own any System or Facilities in the Rights of Way.

(2) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by § 95.53(A) and the Registration Maintenance Fee required by § 95.55(A): Cable Operators for the purpose of providing only Cable Service and operating pursuant to a valid Cable Franchise; and GDRTA. In addition, Cable Operators shall be exempt from any requirement of the Certificate of Registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid Cable Franchise with the City.

(E) Systems in Place Without a Certificate of Registration.

Any System or part of a System found in a Rights of Way for which a Certificate of Registration has not been obtained shall be deemed to be a nuisance and an unauthorized use of the Rights of Way. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities and/or non-complying portion of such System; and/or prosecuting the violator.

(F) Future Uses.

In allowing Providers and Permittees to place Facilities in the Rights of Way, the City shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights of Way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of

the City. No Provider is entitled to rely on the provisions of §§ 95.51 through 95.71 as creating a special duty to any Provider.

(G) Discontinuance of Operations, Abandoned and Unused Facilities.

(1) A Provider who has discontinued or is discontinuing its operations of any System in the City shall:

(a) provide information satisfactory to the City that the Provider's obligations for its System in the Rights of Way under this section and any other sections in the R.C.G.O. have been lawfully assumed by another Applicant and/or Provider; or

(b) submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights of Way capacity. Such proposal must be approved by the Director of Public Works; or

(c) submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. The Director of Public Works must approve said proposal; or

(d) completely remove all specifically identified portion(s) of its System in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or

(e) submit to the City within a reasonable amount of time and in accordance with O.R.C. § 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option where lawful:

(i) purchase the Facilities; or

(ii) unless a valid removal bond has already been posted pursuant to § 95.69(B), require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.

(2) Facilities of a Provider who fail to comply with this Section and which remain Unused Facilities shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to:

(a) abating the nuisance;

(b) taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of O.R.C. § 4905.20 and 4905.21; or

(c) requiring removal of the Facilities by the Provider or by the Provider's surety.

(3) If the City requires a Provider to remove Unused Facilities in any Rights of Way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the Rights of Way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in O.R.C. § 715.261.

(H) Nature of Issuance.

A Certificate of Registration shall not convey equitable or legal title in the Rights of Way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights of Way in the City, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Chapter 95 of the R.C.G.O. The rights to occupy the Right of Way may not be subdivided or subleased; provided, however, that two or more Providers may collocate Facilities in the same area of the Rights of Way so long as each such Provider complies with the provisions of §§ 95.51 through 95.71. Collocating Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of §§ 95.51 through 95.71. A Certificate of Registration does not excuse a Provider from complying with any provisions of §§ 95.51 through 95.71 or other applicable law.

(I) Other Approvals, Permits, and Agreements.

In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a Certificate of Registration issued pursuant to §§ 95.51 through 95.71 shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

Section 3. That R.C.G.O. Section 95.53 is amended to read as follows:

95.53 CERTIFICATE OF REGISTRATION APPLICATIONS

(A) Certificate of Registration Applications.

To obtain a Certificate of Registration to Construct, own, or maintain any System within the City, or to obtain a renewal of a Certificate of Registration issued pursuant to §§ 95.51 through 95.71, an Application must be filed with the City on the form

adopted by the Department of Public Works which is hereby incorporated by reference. All Applications shall be accompanied by a Two Thousand Dollars (US\$2,000.00) Application Fee, which shall be used to pay for the actual costs incurred by the City that are associated with receiving, processing and granting of an Application. At the time of its decision to either grant or deny an Application the City shall assess the costs involved and either credit or debit an Applicants Application Fee for the appropriate amount. If the Application is approved and a Certificate of Registration is granted, any remainder balance of the aforementioned Two Thousand Dollar (US\$2,000.00) Application Fee will be credited against and shall be an offset to the Applicant's required annual Registration Maintenance Fees until such time as the entire Application Fee balance is exhausted. If the Application is not approved and a Certificate of Registration is denied, any balance of the aforementioned Two Thousand Dollars (US\$2,000.00) Application Fee remaining after the City debits the actual costs associated with the Application process, will be returned to the Applicant within sixty (60) days of denial. Should the Application review and administration process incur actual costs in excess of Two Thousand Dollars (US\$2,000.00), the City shall require the Applicant to remit such additional amounts as necessary to properly compensate the City for those added costs within sixty (60) days following issuance or denial of a Certificate of Registration. Any Applicant who fails to timely remit such additionally required amounts shall be subject to the penalties of § 95.99 and the immediate revocation of any Certificate of Registration having been issued.

(B) Information Required for Application to Obtain a Certificate of Registration.

(1) The Applicant shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the City of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:

(a) Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers; and

(b) The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a System Representative. The System Representative shall be available at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and

(c) A certificate of insurance provided to meet the requirements of this Section shall:

(i) Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;

(ii) Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:

(A) use and occupancy of the Rights of Way by the Applicant, its officers, agents, employees and contractors; and

(B) placement and use of Facilities in the Rights of Way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of Underground Facilities and collapse of property;

(iii) Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverages;

(iv) Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:

(A) "It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the City Manager or her/his designee of such intent to cancel, diminish or not to renew."

Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Director of Public Works a certificate of insurance evidencing replacement insurance policies.

(v) Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:

(A) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

(1) Bodily injury:
Each occurrence - One Million Dollars
(US\$1,000,000.00)
Annual aggregate- Three Million Dollars
(US\$3,000,000.00)

(2) Property damage:
Each occurrence - One Million Dollars

(US\$1,000,000.00)

Annual aggregate - Three Million Dollars
(US\$3,000,000.00)

(3) Personal Injury:

Annual aggregate - Three Million Dollars
(US\$3,000,000.00)

(4) Completed operations and products

liability shall be maintained for six (6) months after the termination of a Certificate of Registration.

(5) Property damage liability insurance

shall include coverage for the following hazards: E – explosion, C – collapse, U – underground.

(B) Comprehensive auto liability insurance:

Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the City Manager or her or his designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

(1) Bodily injury:

Each occurrence - One Million Dollars

(US\$1,000,000.00)

Annual aggregate - Three Million Dollars

(US\$3,000,000.00)

(2) Property damage:

Each occurrence - One Million Dollars

(US\$1,000,000.00)

Annual aggregate - Three Million Dollars

(US\$3,000,000.00)

(3) Additional insurance: The City reserves

the right to require any other insurance coverage it deems necessary after review of any proposal submitted by Applicant.

(4) Self-insurance: Those Applicants

maintaining a book value in excess of Twenty Million Dollars (US\$20,000,000.00) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self- insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this Section. This statement shall include:

(a) Audited financial statements for

the previous year; and

(b) a description of the Applicant's self-insurance program; and

(c) a listing of any and all actions against or claims made against Applicant for amounts over One Million Dollars (US\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above Twenty Million Dollars (US\$20,000,000.00).

(5) City's examination of, or failure to request or demand, any evidence of insurance in accordance with §§ 95.51 through 95.71 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under §§ 95.51 through 95.71.

(6) Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by Law. Similarly, Provider shall require any subcontractor to provide workers' compensation coverage in amounts required by Law for all of the subcontractor's employees.

(7) If the Person is a corporation, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.

(8) A copy of the Person's certificate of authority from the PUCO and/or the FCC, if the Person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in § 95.52(I).

(9) Upon request of the City, a narrative (or if applicable PUCO/FCC application information) describing applicant's proposed activities in the City including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under §§ 95.51 through 95.71 and carry on Applicant's proposed activities.

(C) Criteria for Issuance of a Certificate of Registration.

(1) In deciding whether to issue a Certificate of Registration, the City shall consider:

(a) Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.

(b) Whether issuing of the Certificate of Registration will be consistent with §§ 95.51 through 95.71.

(c) Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by Law in order to Construct and operate a System in the manner proposed by the Applicant.

(d) Whether the Applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.

(e) Whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Ordinance and the issuance of a Certificate of Registration.

(f) Any other applicable Law.

(D) Grant or Denial of an Application for a Certificate of Registration.

(1) The City, not later than sixty (60) days after the date of filing by an Applicant of a completed Application, shall grant or deny the Application.

(2) If an Application for a Certificate of Registration is denied, the City shall provide to the Applicant, in writing, the reasons for denying the Application and such other information as the Applicant may reasonably request to obtain consent.

(E) Obligations of a Provider Upon Receipt of a Certificate of Registration.

In addition to the other requirements set forth herein and in the Rules and Regulations for Making Openings in a Public Way each Provider shall:

(1) Use its Best Efforts to cooperate with other Providers and users of the Rights of Way and the City for the best, most efficient, and least obtrusive use of Rights of Way, consistent with safety, and to minimize traffic and other disruptions including street cuts; and

(2) When possible, participate in joint planning, Construction and advance notification of Rights of Way work, as may be required by the City; and

(3) Upon reasonable written notice, and at the direction of the Director of Public Works, promptly remove or rearrange Facilities as necessary for public safety; and

(4) Perform all work, Construction, maintenance or removal of Facilities within the Rights of Way, including tree trimming, in accordance with good engineering, Construction and arboricultural practice including any appropriate state building codes, safety codes and Law and use Best Efforts to repair and replace any street, curb or other portion of the Rights of Way, or Facilities located therein, to a condition to be determined by the Director of Public Works to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this Chapter, any rules and regulations the City may adopt and the R.C.G.O.; and

(5) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable Laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC or other federal, state and/or local regulations; and

(6) Be on notice that removal of trees within the Rights of Way of the City requires prior written approval by the Director of Public Works. Any such tree that is removed without the Director of Public Works' written permission shall be replaced, at the sole expense of the responsible Person, with a healthy tree of like kind; and

(7) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Provider's Facilities within the Rights of Way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and

(8) Use its Best Efforts to cooperate with the City in any Emergencies involving the Rights of Way; and

(9) Provider shall, weather permitting, remove all graffiti within thirty (30) calendar days of notice. Provider shall remove any and all graffiti on any of the Provider's Facilities located within the City Rights of Way. Should the Provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Provider for the cost thereof; and

(10) Providers shall field identify their Facilities in the Rights of Way whenever Providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights of Way as defined in this Chapter. The City shall notify the Providers of the City's date to begin the process at least sixty (60) days prior to the commencement of said activities; In field identifying Facilities:

(a) Providers shall identify all Facilities that are within the affected Rights of Way using customary industry standards and distinct identification; and

(b) Facilities will be so marked as to identify the Provider responsible for said Facilities consistent with the Rules and Regulations for Making Openings in a Public Way; and

(c) Should any such marking interfere with the Facilities function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Director of Public Works.

(d) All marking should be clearly readable from the ground and be consistent with the Rules and Regulations for Making Openings in a Public Way.

(F) Establishment of Utility Corridors.

(1) The Director of Public Works may assign specific corridors within the Rights of Way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or that the Director of Public Works expects, may someday be, located within the Rights of Way.

(2) Any Provider whose Facilities are in the Rights of Way and are in a position at variance with Utility Corridors established by the Director of Public Works shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights of Way. Existing underground Facilities located within a designated Utility Corridor shall not be required to relocate into adjacent or alternative portions of the Rights of Way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Director of Public Works for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Director of Public Works to the City Manager.

(3) The Director of Public Works shall make every good faith attempt to accommodate all existing and potential users of the Rights of Way as set forth in §§ 95.51 through 95.71.

(4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use Best Efforts to install their Facilities within the Rights of Way.

(5) No Facility placed in any Rights of Way shall be placed in such a manner that interferes with normal travel on such Rights of Way.

(6) Unless otherwise stated in a Certificate of Registration or Permit, all Facilities within the Rights of Way shall be Constructed and located in accordance with the R.C.G.O. and with the following provision:

(a) Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the City, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.

Section 4. That R.C.G.O. Section 95.54 is amended to read as follows:

95.54 REPORTING REQUIREMENTS

(A) Construction and Major Maintenance Plan.

Each Provider shall, at the time of initial Application and using its Best Efforts by January 1 of each following year, file a Construction and Major Maintenance Plan with the Department of Public Works. Such Construction and Major Maintenance Plan shall be provided for all geographical areas requested by the Director of Public Works, up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the Director of Public Works to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights of Way. The Construction and Major Maintenance Plan shall include, but not be limited to, all currently scheduled and/or anticipated Construction projects for the next calendar year, if none are scheduled or anticipated then the Plan shall so state. In an effort to assist Providers with the completion of their annual Construction and Major Maintenance Plan, the Department of Public Works, on or before November 1st of each year, will send each Provider's System Representative a descriptive narrative (and any mapping information reasonably available) for all the planned Right of Way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year.

(B) Mapping Data.

With the filing of its Application for a Certificate of Registration, a Provider shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of Right of Way the Provider's System then currently occupies and begin submitting to the City all information that currently exists and which can be provided regarding the location of its Facilities in the Right of Way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. Unless otherwise required by §95.65(B), a Provider shall have up to one (1) year from the date of the Provider's initial filing of an Application for a Certificate of Registration to completely submit all the mapping data for a Provider's System in the entire geographical area of the City which it owns or over which it has control that are located in any Rights of Way of the City in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. Anytime after the issuance of a Certificate of Registration, and upon the reasonable request of the Director of Public Works, a Provider shall be required to provide to the City any additional location information for any Facilities which it owns or over which it has control that are located in any Rights of Way of the City required by the City. Any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a Provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the Provider. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an Applicant or Provider to revocation of its Certificate of Registration and the penalties of § 95.99. Further, each Provider that has been issued a Certificate of Registration shall accurately inform the City on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of Right of Way the Provider's System

then occupied as of the immediately previous December 1st. The Director of Public Works may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the Law regarding public disclosure of a Provider's mapping information. When the City modifies and/or amends the mapping data requirements, the City shall use Best Efforts to avoid unreasonably increasing the burden to the Providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of § 95.54(B) are amended, each Provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the System Representative identified in each Certificate of Registration and in accordance with § 95.71(D); provided, however, that any failure of any Provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

Section 5. That R.C.G.O. Section 95.55 is amended to read as follows:

95.55 COMPENSATION FOR CERTIFICATE OF REGISTRATION

(A) Compensation.

As compensation for the City's costs to administer §§ 95.51 through 95.71, manage, administer and control the Rights of Way and maintain each Certificate of Registration issued, every Provider or any Person operating a System shall pay to the City Registration Maintenance Fees beginning January 1, 2004. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights of Way in accordance with the following process and formula:

(1) The City by January 31st of each year shall calculate all actual and incurred costs associated with Rights of Way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in §§ 95.51 through 95.71.

(2) Providers and Applicants, as required in §§ 95.54(B), shall accurately inform the City upon application for a Certificate of Registration and on or before each subsequent January 1st of the number of miles (rounded up to the nearest mile) of Right of Way the Provider's System then occupied as of the immediately previous December 1st.

(3) The City shall total the entire number of miles of Right of Way reported as being used or occupied by all Providers.

(4) The City shall divide the calculated costs referenced in § 95.55(A)(1) by the total number of miles of Right of Way reported as being used or occupied by all Providers as referenced in § 95.55(A)(3) to arrive at a per-mile cost number.

(5) The City shall then multiply each Provider's mileage calculation as referenced in § 95.55(A)(2) by the per-mile cost calculation referenced in §

95.55(A)(4). The product shall be a Provider's then current annual Registration Maintenance Fee.

(6) The City shall perform its annual calculation of Registration Maintenance Fees following receipt of the Providers required January 1 mileage report. Registration Maintenance Fees shall be invoiced to Providers on or about February 1 of each calendar year and shall be due thirty (30) days following receipt.

(7) Cable companies operating under non-exclusive Cable Franchises for the purposes of providing Cable Service, providers of Open Video System services, which compensate the City under other mechanisms, and GDRTA shall have the mileage of the Right of Way they use and/or occupy included in the calculations described in §§ 95.55, but shall not be required to contribute to the recovery of Rights of Way Costs as defined by §§ 95.51 through 95.71 with the exception of Permit Costs.

(B) Timing.

Registration Maintenance Fees shall be paid in advance by January 1st of each calendar year. Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one (1) full year.

(C) Taxes and Assessments.

To the extent taxes or other assessments are imposed by taxing authorities on the use of City property as a result of a Provider's use or occupation of the Rights of Way, the Provider shall be responsible for payment of such taxes. Such payments shall be in addition to any other fees payable pursuant to §§ 95.51 through 95.71 and shall not be considered an offset to, or in lieu of, the fees and charges listed in §§ 95.51 through 95.71. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in §§ 95.51 through 95.71, or as required by applicable Law.

(D) Interest on Late Payments.

In the event that any Registration Maintenance Fee is not paid to the City by January 31, the Provider shall pay a monthly late charge of one percent (1%) of the unpaid balance for each month or any portion thereof for which payment is not made.

(E) No Accord and Satisfaction.

No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.

Section 6. That R.C.G.O. Section 95.61 is amended to read as follows:

95.61 UNAUTHORIZED USE OF A PUBLIC RIGHTS OF WAY

(A) No Use Without Authorization.

No Person shall use the Rights of Way to operate a System that has not been authorized by the City in accordance with the terms of §§ 95.51 through 95.71 and been issued a Certificate of Registration.

(B) No Use Without Certificate of Registration.

No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights of Way, unless allowed under §§ 95.51 through 95.71 or having been issued a Certificate of Registration.

(C) Unauthorized Use a Violation.

Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of §§ 95.51 through 95.71 continues shall constitute a distinct and separate offense.

(D) Distinct and Separate Offense.

No Person shall fail to comply with the provisions of §§ 95.51 through 95.71. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of §§ 95.51 through 95.71 continues shall constitute a distinct and separate offense.

(E) Penalty Assessed.

The violation of any provision of §§ 95.51 through 95.71 shall be unlawful and a misdemeanor offense. The penalty for any violation of §§ 95.51 through 95.71 shall be as provided in § 95.99.

Section 7. That R.C.G.O. Section 95.65 is amended to read as follows:

95.65 CONSTRUCTION PERMITS

(A) Construction Permit Requirement.

Except as otherwise provided in the R.C.G.O., no Person may Construct in any Rights of Way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirement set forth in § 95.30 et seq.

(1) A Construction Permit allows the Permittee to Construct in that part of the Rights of Way described in such Construction Permit and to obstruct travel

over the specified portion of the Rights of Way by placing Facilities described therein, to the extent and for the duration specified therein.

(2) A Construction Permit is valid only for the dates and the area of Rights of Way specified in the Construction Permit.

(3) No Permittee may Construct in the Rights of Way beyond the date or dates specified in the Construction Permit unless such Permittee:

(a) submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and

(b) is granted a new Construction Permit or Construction Permit Extension.

(4) Original Construction Permits issued pursuant to § 95.65 shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by Inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this Section, Business Hour shall mean the hours between 8 a.m. and 5 p.m. during a Business Day.

(B) Construction Permit Applications.

(1) Application for a Construction Permit shall be made to the Director of the Department of Public Works.

(2) All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(a) Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and

(b) Submission of a completed Construction Permit Application in the form required by the Director of Public Works, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street cuts, and the location of all then known existing and proposed Facilities within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, rules and regulations and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Works. The City reserves the right, in circumstances that the Director of Public Works considers unique, complex or unusual, to

request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and

(c) A City approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Ohio Manual of Uniform Traffic Control Devices, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and

(d) If the Applicant wants to install new Facilities, evidence that there is no surplus space and evidence that the Applicant has received an appropriate Permit and is adhering to the City's Design Guidelines - Creating a Quality Environment; and

(e) If Applicant is proposing an above ground installation on existing poles within the Rights of Way, the applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:

(i) the size and height of the existing poles; and

(ii) based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and

(iii) based on the facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and

(f) If the Applicant proposes to install new poles within the Rights of Way, the Applicant shall provide:

(i) Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and

(ii) Credible evidence to the City that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and

(iii) the location, size, height, color, and material of the proposed poles; and

(iv) Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable Laws concerning the installation of new poles.

(g) If Applicant is proposing an underground installation in existing ducts or conduits within the Rights of Way, the Applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:

(i) based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and

(ii) based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.

(h) If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights of Way, the Applicant must provide Credible information satisfactory to the City to sufficiently detail and identify:

(i) the location, depth, size, and quantity of proposed new ducts or conduits; and

(ii) the excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.

(i) A preliminary Construction schedule and completion date; and

(j) Payment of all money due to the City for:

(i) Permit Fees;

(ii) any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights of Way or any Emergency actions taken by the City.

(iii) any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed.

(iv) any other money due to the City from the Applicant/Person whose Facilities are being Constructed.

(k) When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to §§ 95.51 through 95.71, for the additional Systems or any part of a System is required.

(C) Issuance of Permit; Conditions.

(1) If the City determines that the Applicant has satisfied the requirements of §§ 95.51 through 95.71 and the Construction Permit process, the Director of Public Works shall issue a Construction Permit subject to the provisions of § 95.65 (C)(2).

(2) The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to

protect the public health, safety and welfare, to insure the structural integrity of the Rights of Way, to protect the property and safety of other users of the Rights of Way, and to minimize the disruption and inconvenience to the traveling public.

(D) Construction Permit Fees.

(1) Beginning on January 1, 2005, the City shall annually calculate Construction Permit Fees and appropriately revise §95.33(C,E,G,H,L,M,P,Q and R) and 95.37(C) based upon the formula and calculations described in § 95.65(D). Construction Permit Fees in place as January 1, 2004 shall remain in effect until the City's next annual modification.

(2) The City, on or about January 1st of each year, shall calculate all the actual and incurred Construction Permit issuance, inspection, oversight, enforcement and regulation costs for the previous calendar year including the value of the degradation and reduction in the useful life of the Rights of Way that will result from Construction that takes place therein. "Degradation and the reduction in the useful life" for the purpose of this Section means the accelerated depreciation of the Rights of Way caused by Construction in or disturbance of the Rights of Way, resulting in the need to reconstruct or repair such Rights of Way earlier than would be required if the Construction did not occur.

(3) The City, on or about January 1st of each year, shall total all the Construction Permit Fee receipts received in accordance with the scheduled fees required by § 95.33(C,E,G,H,L,M,P,Q and R) and 95.37 for the previous calendar year.

(4) The City shall divide the calculated costs referenced in § 95.65(D)(2) by the total Construction Permit Fees received as referenced in § 95.65(D)(3) to arrive at a numerical factor representing the previous years cost versus receipts analysis.

(5) The City shall multiply the then currently codified Permit Fees in § 95.33(C,E,G,H,L,M,P,Q and R) and 95.37(C) by the numerical factor as referenced in § 95.65(D)4 to calculate revised Permit Fees for the new calendar year .

(6) The City shall act, on or about January 31st of each year, in accordance with the results of § 95.65(D)(5), to codify new annual Permit Fees by appropriately increasing or decreasing the previous years Permit Fees as then listed on the schedules contained in § 95.33(C,E,G,H,L,M,P,Q and R) and 95.37(C). Revised Permit Fees shall be effective upon passage. Any Permit requests pending on the date of any annual Permit Fee modification shall be subject to all new Permit Fees as modified.

(7) No Construction Permit shall be issued without payment of Construction Permit Fees except to the City (exclusive of its enterprise fund agencies which shall be required to obtain Construction Permits) which shall

be exempt. Construction Permit Fees that were paid for a Permit that the City has revoked due to breach and in accordance with the terms of § 95.60 are not refundable.

(8) The current schedule of Construction Permit Fees is available from the Department of Public Works.

(D) Joint Applications.

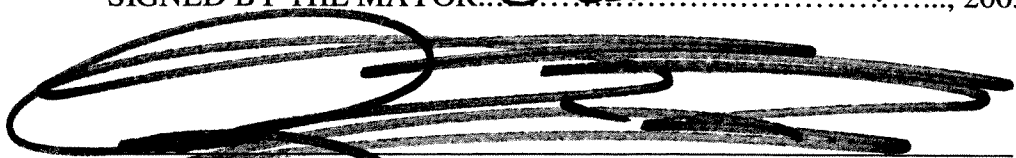
Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights of Way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.

Section 8. That Sections 95.51, 95.52, 95.53, 95.54, 95.55, 95.61 and 95.65 of the R.C.G.O., as heretofore enacted, are repealed.

Section 9. For the reasons set forth in the preamble hereof, this Ordinance is declared to be an emergency and shall take effect immediately upon its passage.

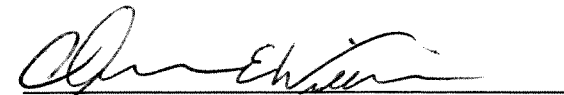
ADOPTED BY THE COMMISSION.....DECEMBER 31....., 2003

SIGNED BY THE MAYOR.....DECEMBER 31....., 2003



Mayor Rhine McLin, City of Dayton, Ohio

ATTEST:


Clerk of the Commission

APPROVED AS TO FORM:


City Attorney